G. R. S. IX-5]

Previous references.

Reserve

1917-18

(courts.)

File No. 61-17

Serial Nos. 1

Later references.

GENERAL AND REVENUE SECRETARIAT.

Serial Nos. 1

Part B for September 1917.

SUBJECT.

Draft reply to the Interpellation of Mr. L. Narasimha Iyengar re operation of Foreign Decrees in Mysore & Vice Versa

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W D 88—GPB—50,000—24-7-16

24/8/17

Interpellation.

By Mr.L.Sreenivasa Iyengar.

Will the Government be pleased to state

(1) Whether their attention has been drawn to the decisions of the Hon'ble the Chief Court of Mysore reported on pages 186 and 188 of Volume XXII of the Mysore Chief Court Reports adopting the view expressed in the decision reported on page 551 of Volume 40 of the Indian Law Reports, Bombay Series, to the effect that an ex parte decree passed by a British Indian Court against a resident of the Mysore State who had not submitted himself to the jurisdiction of such Court and similarly a decree framed by a Mysore Court against a person -- resident in British India who has not submitted himself to the jurisdiction of the Mysore Court are nullities, and cannot be executed out of the province in which the decree was passed.

(2) And if so what steps are being taken to remove the hardship and inconvenience caused to the suitors by this state of the Law especially in view of the growing commercial and trade relations between the Province of Mysore and British India.

J Fins 438-17

Ab 61-17-1

OFFICE OF THE SECRETARY TO THE MYSORE
LEGISLATIVE COUNCIL,

Dated Bangalore, 26th September 1917

In accordance with Rule 2 of the Office Memorandum No. J. ~~2806-16~~ 4847-5-8 Legis. ~~43-13-1~~ 47-15-2, dated ~~30th March 1914~~ 13th June 1916, I submit herewith for information a copy of the questions received today from Mr. L. Sreenivasa Iyengar in connection with the next meeting of the Mysore Legislative Council.

E Srinivasaiyengar
Secretary,
Mysore Legislative Council.

To

The First Member of Council.

12-9-17
Ab 1

2. The question cannot be asked for information in the Department but if it should be referred in answer in the next Session of the Legislative Council, it may be suitably answered.

3 Independently of this, it will also be considered whether the present rule (Law) works as a real hardship? If it is so, the question will be (the work of) perhaps, in consultation with the Chief Court. Has there been any subject relating to this Council since 1912?

MR
24.9.17

25/9

G Secs 4238. (3

G.R.S. III—3]

Routine Notes.

[To be used only for notes, requisitions, etc., not intended for permanent record.]

4 The file is transferred to the Courts section for taking necessary action.

6/10/17

5 Subd for orders with a copy of Vol XXII of the Mysore Chief Courts & 2 L.R. 40 Bom.

25/11

Submission noted for looking into the Prep of the R.A. of the past years

6 R.A. Subject No. 420 of 1913 & 87 of 1917 (Dasara) relate to the reverse case, viz execution of decrees of Mysore courts in the Bombay Presy. The latter representation does not make it clear whether the decrees referred to are those passed in a suit decided after contest, or obtained exparte without the Deft submitting to the jurisdiction of the court; please see Chief Judge's remarks on page 87 of the Genl Subject Volume put up. No other previous representation on the subject could be traced.

Subd the matter personally to the Asst Secy & for direction whether notice should be issued to the Govt of Mysore

10/1

A perusal of the memo in subject No 87 affords no clear case. As regards the contents of the memo, the rules provide for execution.

7 The previous Law Reports referred to in 40 Bom & XXII Mysore C.C. Reports are submitted herewith, as directed.

19/11

N.B.—Should routine notes be written on small slips, the notes must be copied, or slips pasted on this form

W.D. 84—GPB—60,000—20-7-16

WD. 1233—GPB—60,000—1-12-16—S.

(4

G. R. S. III-2.

General and Revenue Secretariat. | File No. of 191 .

Serial No. 8

The question is whether the decision of the Chief Court in 22 Chief Court Reporter page 186 that a decree passed ex parte by a foreign court against an absent person who at the time was a resident of the Native State and has not submitted himself to the jurisdiction of the foreign court was a nullity, is one that works hardship and the evil is one that has to be removed by legislation. The decision follows previous decisions of the Chief Court, and is in accordance with the Full Bench Ruling of Madras High Court, and also with the decisions of the other High Courts. Apart from express statutory provision and the decisions of the High Courts, the view is said to be in accordance with the principles of International Law, and is recognised by the Judicial Committee of the Privy Council in the Vanikat case they held that in a personal action a decree pronounced by a Court of a Foreign State in absentem the absent party not having submitted himself to its authority is by International Law a nullity.

2. Since the decision of the British Indian High Courts were passed long before the new Civil Procedure Code of 1908 was passed. But notwithstanding those decisions the Govt. of India do not amend the Section. Hence there is no necessity for any legislation here, as the Section is the same as in British India.

F. I. Member.

NOTE—Contn. sheet.

WD 1233—GPB—60,000—1-12-16—S.

G. R. S. III-2

General and Revenue Secretariat. | File No. | of 191 .

Serial No.

10

9

I agree.

11. The hardship if any in allotting land other than that now occupied by the grazing Community relationship between the two is urged as a reason for this latter.

12. The hardship if mutual rights & boundaries is changed should be considered to change Mysore land ~~from the other way~~ &.

13 There are likely to be questions Mysore Cannot take independent action -

14 Unless the membership of the Grazing Assn. changes the hardship is such that the matter is not to be brought before the Govt. - the proposed Colony the Assn has no info - , no action need be taken.

15 Suitable draft reply (Memo) Mysore Govt

2543
22.1.18

2
22.1

Draft submitted for approval

Chief Secy

Secy/1

NOTE—Contn. sheet.

1. Typed as revised
2. number the

WD 1233—GPB—60,000—1-12-16—S.

G. R. S. III-2]

General and Revenue Secretariat.	File No.	of 191 .

Serial No.

Typed draft Subd

2/Hon Member

22 23 24

24 Subd. Yesterday was the last day for the receipt of Interpellation for the next Leg. Council and L. Srinivasa Iyengar has not sent any.

25 Orders solicited if these papers may be filed

26.

Hand margin

4/2

(7)

Draft Reply to the Interpellation of Mr. L. Srinivasa Iyengar re execution of Foreign Decrees in Mysore & vice versa

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The hardship, ~~complained of~~ if any, exists both in Mysore and British India, and unless the British Indian Laws is changed it would not be desirable to change the Mysore Law. ~~No~~ Action can only be taken ~~by the Govt~~ if it is shown in the matter, ~~unless the member shows that the hardship is such that the matter is fit to be brought to the notice of the Govt of India.~~ that cases of the kind are sufficiently numerous & that existing remedies are plainly inadequate.

~~The matter~~

Mr 24/2/28

24/2

Draft reply to the Interpellation of Mr. L. Srinivasa Iyengar, re. execution of Foreign Decrees in Mysore and Vice Versa.

The hardship, if any, exists both in Mysore and British India, and unless the British Indian Law is changed it would not be desirable to change the Mysore Law. Action can only be taken if it is shown that cases of the kind are sufficiently numerous and that -- existing remedies are plainly inadequate.